# BERNALILLO COUNTY BOARD OF COUNTY COMMISSIONERS FOOD CODE ORDINANCE NO. 2010-

AN ORDINANCE REPEALING CHAPTER 42, ARTICLE IV, DIVISION 5 OF THE BERNALILLO COUNTY CODE AND ENACTING A NEW DIVISION 5, REGULATING THE RETAIL SALE OF FOOD TO PROTECT THE PUBLIC HEALTH AND SAFETY OF THE RESIDENTS IN BERNALILLO COUNTY.

#### **Purpose of Division**

Regulating the retail sale, commercial and institutional service, and vending of food; defining permit holder, person in charge, employee, food, potentially hazardous food (time/temperature control for safety food), food establishment, safe material, sanitization, and other terms; and providing standards for employee food safety knowledge, health, and practices; food sources, preparation, holding temperatures, and protection; equipment design, construction, installation, cleaning, and sanitization; water and liquid and solid wastes; facilities construction and maintenance, and storage and use of poisonous and toxic materials; requiring a permit to operate a food establishment; and providing for the restriction or exclusion of employees, the examination and condemnation of food, and the enforcement of this code including the setting of penalties.

The Board of County Commissioners of the County of Bernalillo hereby ordains as follows:

### Section 1. Adoption of the Food Code

That a certain document, which is on file in the office of the Clerk of the County of Bernalillo, being marked and designated as the Food Code, 2005 Recommendations of the United States Public Health Service/Food and Drug Administration as published by the U.S. Department of Health and Human Services, Public Health Service, Food And Drug Administration and supplement to the 2005 FDA Food Code, is hereby adopted as, the Food Code of Bernalillo County in the State of New Mexico; for regulating the design, construction, management, and operation of food establishments, and providing for plans submission and approval and the issuance of permits and collection of fees therefore. However, except as modified herein.

#### **Section 2. Insertion**

 "Adult Residential Care Facility" means any congregate residence, maternity shelter, or building for adults, which provides and whose primary purpose is to provide to the residents, within the facility, either directly or through contract services, programmatic services, room, board, assistance within the activities of daily living, in accordance with the program narrative, and/or general supervision to four (4) or more adults who have difficulty living independently or managing their own affairs. The sanitary requirements

CONTINUATION PAGE 2 ORDINANCE 2010-\_\_\_ AN ORDINANCE REPEALING CHAPTER 42, ARTICLE IV, DIVISION 5 OF THE BERNALILLO COUNTY CODE AND ENACTING A NEW DIVISION 5, REGULATING THE RETAIL SALE OF FOOD TO PROTECT THE PUBLIC HEALTH AND SAFETY OF THE RESIDENTS IN BERNALILLO COUNTY.

must meet those identified in New Mexico state law in order to obtain a permit to operate.

2 3 4

1

State law reference: NMAC 7.8.2

5 6

#### **Section 3. Amendments**

7 8

That the following provisions are hereby revised as follows:

9

- 10 Paragraph 8-811.10 Authorities, Methods, Fines, and Sentences changed to read:
- 11 (B) A person who violates a provision of this Code shall be guilty of a misdemeanor,
- 12 punishable by as provided in section 1-6.

13

14 Paragraph 8-813.10 Petitions, Penalties, and Continuing Violations is hereby stricken from the code.

15

16 17

18

19

20

21

**Section 4.** Severability Clause. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of the ordinance. The Commission hereby declares that it would have passed this ordinance and each division, section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or invalid.

22 23 24

Section 5. Effective Date. This ordinance shall take effect thirty days after final adoption by the Bernalillo County Board of County Commissioners.

25 26 27

#### **DIVISION 5. FOOD SERVICE SANITATION\***

28 29

\*Cross references: Alcoholic beverages, § 14-61 et seq.

State law references: Food service sanitation, NMSA 1978, § 25-2-1 et seq.

30 31 32

33

34

35

36

37

38

# Sec. 42-307. Temporary food service establishments.

A temporary food service establishment shall comply with all provisions of this division which are applicable to its operation; provided, however, that the environmental health authority may augment such requirements when needed to ensure the service of safe food, may prohibit the sale of certain potentially hazardous food, and may modify specific requirements for physical facilities when in his opinion no imminent health hazard will result.

39 (Ord. No. 78-56, art. 5, § 7, 9-5-78)

40 41

# Display of Placard.

CONTINUATION PAGE 3 ORDINANCE 2010-\_\_\_ AN ORDINANCE REPEALING CHAPTER 42, ARTICLE IV, DIVISION 5 OF THE BERNALILLO COUNTY CODE AND ENACTING A NEW DIVISION 5, REGULATING THE RETAIL SALE OF FOOD TO PROTECT THE PUBLIC HEALTH AND SAFETY OF THE RESIDENTS IN BERNALILLO COUNTY.

Every food service establishment in the county shall display, in a place designated by the regulatory authority, a placard approved by the regulatory authority stating the grade of the food service establishment; provided, however, that temporary food service establishments shall not be subject to grading. Grades of food service establishments shall be as follows:

- (1) Approved. Grade "Approved" means an establishment does not have continued critical or consecutive violations as documented on the most recent inspection report. Critical Violations that are documented as corrected on site on the most recent inspection will maintain "Approved" status unless the violation is identified on consecutive inspections.
- (2) Unsatisfactory. Grade "Unsatisfactory" means an establishment continued to have the same violation on consecutive inspections or critical violations continued to exist in the establishment after the most recent inspection. A food service establishment that is downgraded to the "Unsatisfactory" grade may maintain operation for a period of time not to exceed 30-days. The permit holder or operator of any food service establishment, which has been downgraded, may at any time request an inspection for the purpose of regrading the food service establishment. Within five days following receipt of a request for reinspection, the regulatory authority shall conduct an inspection, and thereafter as many additional inspections as may be deemed necessary to ensure that the food service establishment operator is complying with the higher grade requirements. If the inspections indicate compliance, the food service establishment shall be awarded the "Approved" grade.
- (3) *On Notice*. The "On Notice" designation is documented on the inspection report. A food service establishment shall be placed "On Notice" when critical violations are identified on the most recent inspection or when consecutive inspections result in identification of the same violation. An establishment may be downgraded to "Unsatisfactory" if a follow up inspection is conducted after an establishment is placed "On Notice" and the same violations continue to exist.

# Sec. 42-311. Food service establishments outside jurisdiction of the environmental health authority.

Food from food service establishments or food-processing establishments outside the jurisdiction of the environmental health authority of the county may be sold within the county if such establishments conform to the provisions of this division or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the environmental health authority may accept reports from responsible authorities in other jurisdictions where such establishments are located; provided,

CONTINUATION PAGE 4 ORDINANCE 2010-\_\_\_ AN ORDINANCE REPEALING CHAPTER 42, ARTICLE IV, DIVISION 5 OF THE BERNALILLO COUNTY CODE AND ENACTING A NEW DIVISION 5, REGULATING THE RETAIL SALE OF FOOD TO PROTECT THE PUBLIC HEALTH AND SAFETY OF THE RESIDENTS IN BERNALILLO COUNTY.

- however, that the environmental health authority is authorized to make such inspections as he may deem necessary to ensure himself of compliance with this division.
- 3 (Ord. No. 78-56, art. 5, § 10, 9-5-78)

# 4 5

6

7

8

### Sec. 42-314. Inspection fees.

- (a) Each food service establishment shall pay an annual inspection fee that shall be established by resolution by the board of county commissioners. Such inspection fees shall be payable not later than March 15 of each year.
- 9 (b) All temporary food service establishments shall pay a fee for each two-week period of operation that shall be established by resolution by the board of county commissioners.
- 11 (Ord. No. 78-56, art. 5, § 13, 9-5-78; Ord. No. 85-45, art. 5, 10-1-85; Ord. No. 2005-12, §
- 12 1, 9-13-05)

CONTINUATION PAGE 5 ORDINANCE 2010-\_\_\_ AN ORDINANCE REPEALING CHAPTER 42, ARTICLE IV, DIVISION 5 OF THE BERNALILLO COUNTY CODE AND ENACTING A NEW DIVISION 5, REGULATING THE RETAIL SALE OF FOOD TO PROTECT THE PUBLIC HEALTH AND SAFETY OF THE RESIDENTS IN BERNALILLO COUNTY.

BE IT ORDAINED BY THE GOVERNII BERNALILLO, NEW MEXICO THIS _	
<u></u>	
	BOARD OF COUNTY COMMISSONERS
	Art De La Cruz, Chair
	Maggie Hart Stebbins, Vice Chair
	Alan B. Armijo, Member
	Michael C. Wiener, Member
	Themas of Wiener, Harmon
	Michael Brasher, Member
APPROVED AS TO FORM:	
AFFROVED AS TO FORM.	
County Legal	
Date:	_
A TYPE CT	
ATTEST:	
Maggie Toulouse Oliver, County Clerk	_
Date:	